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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Michael Anthony Elliott,)
)
Petitioner,)
)
v.) 1:06CV398
)
Selma Townes, et al.,)
)
Respondents.)

**ORDER AND RECOMMENDATION
OF MAGISTRATE JUDGE ELIASON**

Petitioner, a prisoner of the State of North Carolina, has submitted a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody, together with a request to proceed in forma pauperis. The Clerk of Court received the submission on April 28, 2006, which Petitioner had dated as of April 24, 2006. In reliance upon the representations set forth in the request, the Court finds that petitioner had deposits of \$487.13 in the last six months and it is, therefore, determined that he must pay the \$5.00 filing fee in this matter. Accordingly, the request to proceed in forma pauperis is granted for the sole purpose of entering this order and is otherwise denied.

IT IS THEREFORE ORDERED that petitioner's request to proceed in forma pauperis is granted for the sole purpose of entering this order and is otherwise denied.

IT IS FURTHER ORDERED that petitioner's motion for the appointment of counsel be denied.

IT IS RECOMMENDED that this petition be dismissed without prejudice to

petitioner filing a new petition, accompanied by the \$5.00 filing fee.

Russell A. Eliaison
United States Magistrate Judge

May 2, 2006